happened, as, for example, the valid execution of a new will. *Dixon* v. *Solicitor to the Treasury*, [1905] P. 42; *Strong's Appeal*, 79 Conn. 123, 63 Atl. 1089. The courts treat revocations by duly executed written instruments in the same manner. *Rudy* v. *Ulrich*, 69 Pa. St. 177; *Security Co.* v. *Snow*, 70 Conn. 288, 39 Atl. 153. Unless the condition is expressed in the writing this would seem contrary to the parol evidence rule. See *Sewell* v. *Slingluff*, 57 Md. 537, 549. If, however, in these cases we regard the courts as setting aside a legally binding revocation upon the equitable ground of mistake, this objection is removed, but we meet the difficulty that the mistake is usually one of law, and often, as in the principal case, a mistake as to the future, not as to existing facts. The American authorities, while treating such written revocations as conditional, lay down the rule that, if the condition fail because of something "*dehors* the will," the revocation is binding. *In re Melville's Estate*, 245 Pa. St. 318, 91 Atl. 679; *Blakeman* v. *Sears*, 74 Conn. 516, 51 Atl. 517. But in the principal case we find the condition fails because of faulty execution — something within the will so far as anything can be — and so the revocation would be ineffective. The principal case may be supported upon the further ground that the evidence may not have shown that the testator when he signed had the necessary *animus revocandi*. See *Estate of Meyer*, [1908] P. 353; *Fleming* v. *Morrison*, 187 Mass. 120, 72 N. E. 499.

BOOK REVIEWS

JUSTICE AND THE POOR. A Study of the Present Denial of Justice to the Poor and of the Agencies Making More Equal their Position before the Law, with Particular Reference to Legal Aid Work in the United States. By Reginald Heber Smith of the Boston Bar. Published for the Carnegie Foundation for the Advancement of Teaching. New York: Charles Scribner's Sons. 1919. pp. xiv. 271.

In this admirable study of the administration of justice as it affects the poor in the American city of to-day we have an example of the change which has taken place in legal thought in the present generation. Not long ago judges were telling us that an act requiring employees to be paid in cash and not in orders on a company store placed the laborer "under guardianship," were asking "what right has the legislature to *assume* that one class has the need of protection against another," [1] and were asserting that "*theoretically* there is among our citizens no inferior class." [2] To-day we are not satisfied with abstract conceptions divorced from actual life, but seek to know the concrete situation and the actual effect of legal rules and of the judicial administration of justice thereon. Where a generation ago we were content to consider only the abstract justice of the abstract rule, to-day we insist on looking at law functionally. The question is what it does and how it does it, and abstract justice of the content is no longer held to justify concrete injustice in application. Lawyers more than others still cling to the nineteenth-century faith in the abstract justice of an abstract universal rule as something valuable in itself, be the results what they may. Hence it is significant of a happy change in the professional attitude that lawyers have given us the two concrete studies which must be consulted above everything else by

[1] State *v.* Haun, 61 Kan. 146, 161. [2] People *v.* Frorer, 141 Ill. 171, 186–187.

sociologists, social workers, and legislators, as well as by members of the bar who are desirous of improving the law.

Mr. Smith's book will stand with Judge Parry's "Law and the Poor" as an indispensable storehouse of information and source of ideas. But valuable as the book will be for the nonlegal worker in the social sciences, we are here concerned primarily with its interest for the lawyer. And at the outset we may insist on the service of this presentation of facts from actual first-hand knowledge in shaking the ideas which lawyers have been wont to acquire through habits of abstract and *a priori* handling of legal questions. Their habit of working out all possible difficulties by a purely logical process and their instinctive fear that something may open a way for magisterial caprice have made them much more critical of projects for improving the law than fertile in devising them. Hence the most effective agencies of to-day have been worked out by laymen and are in the hands of administrative rather than judicial officers. Such institutions as workmen's compensation, in which the statute is framed with reference to the end rather than solely with reference to the abstract justice of the means, may teach us much as to matters which are still within the domain of judicial justice.

Few have been in a position to perceive how our legal system has been functioning and is functioning with respect to the interests of the mass of inhabitants of the modern city. Lawyers need to realize that in practice the poor are not merely without protection but the law itself is often made an affirmative engine for oppressing them (p. 9). Lay writers, who have been too prone to interpret such phenomena in terms of class interest or class struggle, need to learn that this is not at all a matter of rich and poor or employer and employee; that the state of our procedure and the organization of our tribunals enable the poor to despoil one another and permit "the shrewd immigrant of a few years' residence to defraud his recently arrived countrymen" (p. 9). Much of the prejudice which the mere title of the book has excited in some quarters may be dispelled when it is found that Mr. Smith's investigation discloses, not a class line, but the old-time cleavage between the honest and the dishonest. The poor man is the prey of a host of petty swindlers who have learned how to use the powerful and ruthless weapon of the law. Businesses exist and flourish by unscrupulous exploiting of a state of things in which "as against the poor the law can be violated with impunity because redress is beyond their reach" (p. 10). Lawyers should reflect seriously upon this use of law as an engine of extortion and upon the failure of abstractly good laws because learned and well-intentioned courts have too often made remedial legislation nugatory by construing statutes in the light of the common law instead of in the light of the social situation back of them (p. 14). Here again the vice of our purely abstract methods becomes apparent. As we habitually argue such questions in court, the tribunal is seldom in a position to appreciate the concrete social facts to which a statute is to be applied. Many good lawyers even now take offense at the means devised by Mr. Justice Brandeis while at the bar to assist the courts in reaching a juster and more complete view of what may have been before the legislator and behind his enactment. But Mr. Smith furnishes us convincing evidence that the classical criterion of old law, mischief and remedy, when applied only from the materials furnished by

the law books and the general knowledge of the bench, will not suffice to make such legislation meet the ends of the law, and adds weight to the demand for better means of informing courts upon the extra-legal conditions material to application and interpretation of law, which has often been urged on general grounds.[3]

On other points, on which lawyers have been better informed of recent years, Mr. Smith reinforces by direct evidence conclusions which are coming to be held more or less widely in the profession. The inadequacy of our procedural and administrative machinery to make the substantive law effective for its purpose has come to be generally conceded. It is gratifying to note that much if not all that agitators have attributed to class dominance, that exponents of the economic interpretation have traced to the self-interest of employers, and that the muckrakers of a decade ago explained by bad men in judicial office and sinister influences behind courts, is shown to be merely the result of a rapid development of urban conditions to which the judicial organization and legal procedure of the rural pioneer America of the past was unsuited (p. 15). But the lawyer's duty goes beyond recognition of the one proposition and establishment of the other. He is called to discover and to employ the scientific means of improvement which only the expert may know or may wield effectively. And in this connection the thoughtful lawyer may learn much from this book. For one thing, it is full of illustrations of the need of a ministry of justice (or its equivalent) in our several commonwealths. When all legislative improvement in law is left to the private initiative of those who have a pecuniary interest in change, we may expect that while automobile associations and hotel keepers' associations and lumber dealers' associations give our judiciary committees plenty of occupation, it will be no one's business to make legal procedure a better engine of justice in the general run of cases, and that practical justice to the bulk of our urban population will be overlooked. If it were some one's business to study the matter and to push with authority the measures which his study showed to be needed, many parts of the substantive law could be made more efficacious exactly as has been done in the case of workmen's compensation (p. 87). Must we wait for the inevitable demagogue to organize a political agitation in support of some crude but specious remedy, and then confine ourselves to criticism?[4]

Even the common law suffers from a system or want of system wherein questions of grave import to large numbers of people are only brought before our highest courts when some individual litigant is able and willing to spend time and money in an appeal, and are either left undecided or are presented and argued by one side only. This situation has been too common under workmen's compensation acts, where only the insurance companies could afford to go to the ultimate court of appeal (pp. 27, 207) and in connection with the law of landlord and tenant as applied to tenancies at will or periodical tenancies in cities (p. 207). As Mr. Smith says

[3] Willcox, "The Need of Social Statistics as an Aid to the Courts," 47 AMER. L. REV. 259; Palfrey, "The Constitution and the Courts," 26 HARV. L. REV. 507. See also 2 GENY, MÉTHODE D'INTERPRÉTATION, 2 ed., § 185.

[4] On this matter reference should be made to the report of the English MACHINERY OF GOVERNMENT COMMITTEE, 63–78 (1918). Lord Haldane was chairman of this committee. See also 1 NASH, LIFE OF LORD WESTBURY, 191 *ff.*

justly, "one-sided argument inevitably tends to produce a one-sided construction of the law" (p. 27).

Again, we should reflect seriously upon the increasing use of the criminal law to secure the interests of the poor in cases that ought to be dealt with on the civil side of our courts (pp. 75, 97). It is a reproach to the administration of justice that harsh and summary measures, at best involving hardships and in practice often involving much more, should afford the only assured remedy in large classes of cases involving wages or domestic relations. Even more we should reflect upon the increasing resort to administrative officials — not tribunals — doing summary justice by administrative action, to do the work that falls in theory upon courts and lawyers (pp. 94–97). The powers of the labor commissioner in Massachusetts (p. 97), of the supervisor of small loans in Massachusetts (p. 95), and of the commissioner of agriculture in Virginia (p. 95) are significant of a reliance upon summary administrative methods wholly at variance with our common-law polity which the profession cannot afford to ignore. Here again a ministry of justice, charged with the duty of studying the situations that give rise to such legislative extensions of administrative power and devising effective legal remedies therefor, might give us better solutions and preserve our legal inheritance.

Bar associations almost everywhere are now awake to the need of better organization of courts. Much valuable material on this subject is afforded by Mr. Smith's investigations (pp. 54–55, 74). Another recognized item in recent programs of procedural reform is regulation of procedure by rules of court. Here also important new evidence is adduced. For instance, "there is no reason why a court summons should read . . . so that it is necessary to employ counsel to explain that the plain English words do not mean what they say," on pain of wasting time in futile attendance on courts (pp. 33–34). But such changes as are needed are not for the legislature. If courts had control of the form of process and the administrative side of the courts were well organized, a rule of court would speedily obviate a source of much expense and irritation. Indeed an impressive case is made for better organization and development of the administrative side of the courts. Such things as the simplification and standardization of complaints in some domestic relations courts so that a wife may make out all necessary papers herself with slight assistance from the clerk (p. 78), as the adjustment of the hours of sitting to meet the needs of a working population in other courts of this sort (p. 77), as the preparation of cases for trial by probation officers (p. 78), as the system of ascertaining who are available for assignment as counsel, worked out by legal aid societies in this country, but provided by the courts in Scotland and recently under rules of court in England (pp. 101–102) — these examples of what may be done when thought is given to the administrative organization of tribunals are full of lessons for our higher courts. Much as lawyers have discussed contingent fees, they have given little or no thought to the machinery that might take care of the many cases which cannot pay even a contingent fee (p. 38). The system of costs is well known to be full of anachronisms, and the traditional argument that costs deter rash and unfounded litigation proves to be only an *ex post facto* reason behind a mass of abuses. Costs "are too

low to deter the rich but high enough to prohibit the poor" (p. 23). Where courts have been given power to regulate costs by rules and to simplify procedure by rules so as to obviate them, no orgies of rash litigation have followed. On the contrary, "it is the general opinion that fewer and certainly no more fraudulent claims for personal injuries are presented to Industrial Accident Boards where there are no costs than were formerly brought to courts where fees obtained" (p. 20). We ought to learn from such cases what might be done in our higher courts were they well organized on the administrative side and were they given adequate powers of rule-making. This is brought out especially in connection with service of process by mail. Experience has amply refuted all the *a priori* objections which lawyers are fond of urging against this much-needed simplification of an expensive proceeding (p. 26). No doubt strong judges will be needed where this power is committed to the courts. But Mr. Smith has shown abundantly that strong judges are imperative in courts of summary procedure dealing with petty litigation (pp. 47–48, 66–67), and if we have been able to find strong judges for such courts it ought not to be impossible to find them for the higher courts.

If a large task lies before the profession in modernizing the organization, the administrative machinery, and the procedure of our higher courts, we may look forward to it with less apprehension when we read Mr. Smith's account, from the sources and from first-hand investigation, of the small claims courts, courts of conciliation, and domestic relations courts which have arisen in the past decade. Here we find examples of what to avoid as well as models to be followed. Thus, in the Kansas Small Debtors' Courts, with narrow jurisdictional limits, with their distinct organization, going back to the old policy of a new court for every new need, and their attempt to provide justice without trained judges and without law for the petty litigant, we find courts which "at the present time . . . are superior to the act which formed them" (p. 45), but which will hardly commend themselves as models. On the other hand, the Portland (Oregon) Small Claims Court (p. 47), the Chicago Small Claims Court (pp. 51–52), and above all the Cleveland Small Claims Court (pp. 49–50), afford examples of modern organization which deserve careful study. In all these courts, as well as in the Courts of Conciliation (pp. 60–65), the stock *a priori* objections to such tribunals have proved unfounded. If they have encouraged litigation, it has been just and proper litigation where hitherto justice had not been accessible. Instead of being flooded with cases by collection agencies, they have put an end to a situation which played into the hands of such agencies (p. 54). Mr. Smith's study of the collateral functions of these courts (pp. 56–59) is also full of meat for those who are chiefly interested in the higher courts.

What strikes one particularly as he reads of the Small Claims Courts, the Conciliation Courts, and the Domestic Relations Courts, is the great development of the administrative side of these tribunals, the giving over of the purely contentious conception of a judicial proceeding, and the doing by the court of what in our ordinary courts must be done for each party by or through an attorney (*e. g.*, in the Domestic Relations Courts (p. 78)). But it is in these very respects that the administrative tribunals, which continue to spring up on every hand, have found the decisive ad-

vantages that have made them so popular. In spite of the suspicion which these novel features must needs create in the mind of the common-law lawyer, the event is showing that judicial tribunals of this type can and do administer justice in accord with the substantive law and to the general satisfaction of litigants, and that the elimination of involved and detailed procedure is not in any way incompatible with the general security. Experience of these new judicial tribunals may well assure the bar upon this point and pave the way for like developments in the higher courts. Otherwise, rise of administrative tribunals and shifting of the administration of justice thereto may leave the common-law courts no more than the shadow of their old-time jurisdiction.

Lawyers will also be interested in the discussion of the Public Defender and the author's conclusion, which appears well warranted, that "as the probation branch is indispensable to every criminal court, the sounder line of development would seem to be to entrust this service to the probation officers rather than to duplicate the work and create new officials" (p. 127). As in so many other cases, we have sought to remedy ill effects of the want of modern organization by multiplying officers rather than by going to the root of the difficulty.

Finally, attention should be called to the chapter on Legal Aid and the Bar (pp. 226–239), which contains much that lawyers should take to heart.

In making Mr. Smith's investigations possible and publishing the results of his work the Carnegie Foundation has done a conspicuous service to the law.

ROSCOE POUND.

PRINCIPLES OF THE LAW OF CONTRACTS. By Sir William R. Anson. Fourteenth English edition, third American edition, with American notes by Arthur L. Corbin. New York: Oxford University Press. 1919. pp. v–568.

To the frequently repeated assertion that Anson on Contracts is the best book on the subject, I have for many years replied, "Possibly, but what a distressingly humiliating confession." We are now up to the third American edition. It is based either upon the fourteenth English edition, according to the title-page, or upon the twelfth, according to the preface. Immaterial. Plenty learning there is. Plenty industry. Plenty phraseologies which ought long ago to have been discarded. Some useful analysis. Little attempt at synthesis. No effort at the eradication of time-dishonored grotesqueries. The whimsies of the "authorities" (Authorities always impede progress) once more treated with uncritical adoration.

Quasi-contracts. — Certain heterogeneous classes of cases, which have in common conspicuously this, that they are *not* contracts, are huddled together, put into a class, and called *quasi*-contracts — by translation, *as-if*-contracts (sections 8, 271–273, 402, 475). The book tells us that the term is "convenient" (sec. 5). I call it stupid, or, at best, slipshod. Why we should group "a multifarious class of legal relations" (in none of which agreement is ever a constituent factor) under the word "contract" (from which agreement is never absent), or under the meaningless phrase "as-if contracts," is something beyond my comprehension. Do not refer me to bygone days when none of the terms was understood. I am speaking of the third American, based upon the twelfth or fourteenth English, edition of Anson on Contracts. Are ancient crudities entitled to greater respect than modern? Is not the ashpit the proper place for old and young alike?